July 8, 2008

Financial Services Regulatory & Enforcement Practice

FDIC and FSA Sign Agreement to Increase Cooperative Cross-Border Framework for Emergency Planning and Action

The Federal Deposit Insurance Corporation (FDIC) and the United Kingdom's Financial Services Authority (FSA) signed a memorandum of understanding (MOU) on June 25, 2008, providing for increased information-sharing and coordinated regulatory efforts to address future emergency situations in connection with cross-border banking activities. Although previous MOUs laid the groundwork for general cross-border communication and cooperation, this new agreement's creation of a cooperative framework for coordinated cross-border action and contingency planning in emergency situations represents a departure from past cooperative supervisory efforts.

The MOU identifies the need to strengthen communication in connection with cross-border banking operations and to harmonize supervisory efforts to resolve the effects of troubled insured depository institutions and other financial services firms operating in both the United States and the United Kingdom. Central to this commitment is joint before-the-fact preparation to establish optimal procedures to identify emergency situations and assure effective implementation of resolution strategies.

Through periodic and ad hoc consultations, the FDIC and the FSA propose to exchange information relevant to the financial and operational well-being of cross-border firms. This information may include a firm's capital structure, liquidity, internal controls and procedures, market ratings information, and confidential supervisory information. In addition, in an effort to avert systemic crisis, the two authorities intend to enhance cooperation in planning for and analyzing potential resolution scenarios. Crisis management resolutions reached by the FDIC and the FSA may involve supervisory action, applications for judicial action, formal administrative proceedings, conservatorship, receivership, liquidation, establishment of a bridge bank, and facilitation of the sale or merger of a troubled firm.

In a previous MOU executed in 1996, the FSA, FDIC, Office of the Comptroller of the Currency, and Board of Governors of the Federal Reserve System (the "Board") agreed to share supervisory information relating to cross-border financial institutions. Previous cooperative activities between US and UK authorities, however, were more limited in nature and were designed to alert relevant supervisory officials to any imprudent financial operations, evidence of legal violations, or to events that would have a material adverse effect on the financial services sector. Absent from the 1996 agreement was the development of a consolidated supervisory regime designed to coordinate procedures to detect emergency situations and prepare consonant responses.

The current MOU supplements the existing cooperative arrangements under the 1996 agreement, which specifically continue to apply, with a coordinated cooperative regime that is directed specifically and proactively at the management and resolution of troubled banks. This new agreement reflects a logical response to the current difficult economic climate in the United States and Europe, and the need for national regulatory authorities to be attentive to the international systemic risk consequences of the failure of global financial services firms.

This FDIC-FSA agreement also reflects a growing trend among US and UK financial services regulators to adopt a more coherent and coordinated regulatory approach in response to changing markets in their respective home jurisdictions. On July 7, for example, the US Securities and Exchange Commission (SEC) and the Board signed an MOU to deepen information sharing and cooperation between those two agencies in the aftermath of the Board's expanded role with major securities firms following the collapse of Bear Stearns and related developments. The SEC – as did the FSA in 2006 – also recently entered into a MOU with the Commodity Futures Trading Commission; an agreement between the SEC and the Department of Labor is anticipated later this summer. The SEC has also recently embarked on a mutual recognition strategy in the securities markets to reduce international regulatory friction, lower costs, enhance competition, and strengthen investor protection to promote cross-border trading. These and other agreements recognize that the functional and geographic dividing lines between different types of financial activities (e.g., commercial banking and investment banking) and their regulators continue to blur, and the lending, housing, securities, commodities and derivatives markets become increasingly interconnected around the world.

While the practical implications and public policy aspects of these types of regulatory compacts will have to be carefully monitored, these inter-agency and cross-border cooperative efforts among supervisory authorities may provide a better opportunity for global regulatory authorities to respond more quickly and effectively to global financial demands and disruptions as geographic borders between and among markets continue to erode. The latest agreement between the FDIC and the FSA continues the efforts of US and UK regulators to engage their counterparts in the larger global marketplace to develop a more proactive and consultative approach towards regulating cross-border activities.

For inquiries related to this alert, please contact the authors, Angela Hayes at ahayes@mayerbrown.com, Charles Horn at chorn@mayerbrown.com or Brad Resnikoff at bresnikoff@mayerbrown.com.

For information about Mayer Brown's **Financial Services Regulatory & Enforcement** practice, please visit mayerbrown.com or contact Scott Anenberg at sanenberg@mayerbrown.com, Michael Butowsky at mbutowsky@mayerbrown.com, or Charles Horn at chorn@mayerbrown.com.